



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Brandon Paul Coleman

CASE NO. 3100381

(TriMet Exclusion Number 164527)

ORIGINAL HEARING DATE: October 14, 2010

CONTINUED HEARING DATE: October 28, 2010

APPEARANCES:

Brandon Paul Coleman, Excluded Party

Deputy John Christensen, on behalf of TriMet

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Mr. Brandon Paul Coleman on September 24, 2010. The case was forwarded to the City of Portland Hearings Office on September 30, 2010. The Hearings Office mailed a hearing notice to the parties on October 5, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Coleman's rights in the hearing process. A continued hearing notice and an Interim Order were mailed to the parties on October 15, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Coleman when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on October 15, 2010.

Mitigating and/or Aggravating Factors: The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

Probability that the excluded individual engaged in the conduct supporting the exclusion: TriMet has the burden to demonstrate that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred. Exhibits 1 through, and including, 7 were received into the record without objection. Deputy Christensen submitted a written report, Exhibit 3, and provided testimony about his contact with Mr. Coleman.

Deputy Christensen stated that he contacted Mr. Coleman at the entrance to the SE 82nd Ave Transit Station on September 24, 2010. Deputy Christensen recognized Mr. Coleman and was aware from previous contacts that Mr. Coleman was excluded from all TriMet property. When asked about being excluded from TriMet property, Mr. Coleman told Deputy Christensen that he was not excluded. Deputy Christensen then conducted a records check which confirmed that Mr. Coleman was excluded from TriMet property from July 30, 2010 until September 27, 2010. Mr. Coleman was taken into custody for Interfering with Public Transportation, ORS 166.116 as a result of being on TriMet property during the term of an exclusion. Deputy Christensen indicated later in the hearing that the incident on July 30, 2010, which led to Mr. Coleman's previous exclusion, involved Mr. Coleman spitting on TriMet property, ranting and yelling while on TriMet property and ultimately stealing items from a store near the TriMet station.

Mr. Coleman was cited with violating TriMet Code 28.15C-Criminal Activity for Interfering with Public Transportation and issued a new exclusion. Mr. Coleman appeared at the hearing and stated that he suffers from bipolar disorder and schizophrenia. He has been managing his conditions with the assistance of state/county agencies, however at the time of his contact with Deputy Christensen he indicates that he was in transition between agencies and was homeless. He also reports that on September 24, 2010 he had consumed some alcohol before he was contacted by Deputy Christensen. Additionally, Mr. Coleman indicates that in July, when the previous exclusion was issued, he was hospitalized on more than one occasion as a result of his disorders. Mr. Coleman brought with him his current counselor from Multnomah County Mental Health, Katie Lentz, to testify on his behalf. Ms. Lentz testified that her program is now supervising Mr. Coleman and that over the last few months Mr. Coleman has been going through a "difficult time". Ms. Lentz indicates that the reason that Mr. Coleman was not at the last hearing on this matter is because he was hospitalized due to his disorders. Ms. Lentz also reports that Mr. Coleman has been homeless on multiple occasions in the last few months.

The Hearings Officer considers the officer to be credible and the facts contained in both the report and his oral statements to be true. In order to find the exclusion against Mr. Coleman to be valid, this Hearings Officer must find that Mr. Coleman engaged in Criminal Activity, specifically Interfering with Public Transportation ORS 166.116, while on TriMet property. ORS 166.116(a) provides that a person has committed the crime of Interfering with Public Transportation if the person intentionally or knowingly enters or remains unlawfully in or on a public transit station. ORS 161.085 provides that a person acts "knowingly" when a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists. This Hearings Officer considers Mr. Coleman's disorders to be significant in determining whether at the time of entering onto TriMet property on September 24, 2010, Mr. Coleman acted with the awareness that he was excluded from TriMet property. Based on the facts of the incident on July 30, 2010 which resulted in the exclusion in place on September 24, 2010, and the statements of Mr. Coleman and Ms. Lentz as to the inconsistent nature of Mr. Coleman's care over the preceding few months, this Hearings Officer finds that TriMet has not met their burden to prove that it is more probable than not that Mr. Coleman entered onto TriMet property *knowing* that he was currently prohibited from doing so.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Coleman on September 24, 2010.

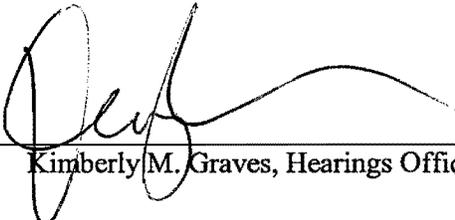
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on October 29, 2010, not more than five (5) business days following the hearing, and will become final immediately.

4. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 29, 2010



Kimberly M. Graves, Hearings Officer

KMG:rs/cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	Continued hearing notice	Hearings Office	Received